UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-25482-CV-WILLIAMS

DAVID CALERON VILLANUEVA,

Petitioner,

v.

ROGER MORRIS, in his official capacity as Acting Warden of the Miami Federal Detention Center; GARRET RIPA, in his official capacity as Miami Field Office Director, U.S. Immigration and Customs Enforcement and Removal Operations; TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States; and the EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.
_____/

RESPONDENTS' RETURN IN OPPOSITION
TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents[1], by and through the undersigned Assistant United States Attorney, in accordance with the Court's November 24, 2025 Order [DE 4], respectfully submit the following return in opposition to the Petition for Writ of Habeas Corpus [DE 1] (Petition). For the reasons set forth below, the Petition should be denied.

[1] A writ of habeas corpus must "be directed to the person having custody of the person detained." 28 USC § 2243. In cases involving present physical confinement, the Supreme Court reaffirmed in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), that "the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent." *Rumsfeld v. Padilla*, 542 U.S. 426, 439 (2004). Petitioner is currently detained at the Miami Federal Detention Center ("Miami FDC"). The only proper Respondent is Roger Morris, Acting Warden of Miami FDC.

INTRODUCTION

Petitioner DAVID CALERON VILLANUEVA (Petitioner) asks this Court to issue a writ of habeas corpus requiring him either to be released or provided with a bond hearing, on the basis that detention under 8 U.S.C. § 1225(b)(2) does not apply to him. *See* DE 1 ¶¶ 4-6, 39; *see also id.* at COUNTS I-III, and PRAYER FOR RELIEF. Instead, he argues that 8 U.S.C. § 1226(a) allows for his release on conditional parole or bond. *See generally id.* Accordingly, this case comes down to a question of statutory interpretation. Specifically, what statutory provision controls Petitioner's detention.

Section 1225(b)(2)(A) mandates detention for "an alien who is an applicant for admission." 8 U.S.C. § 1225(b)(2)(A). Pursuant to § 1225(a), "[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). As fully set forth below, Petitioner is inadmissible for having entered the United States without inspection or admission, and is in ongoing removal proceedings based on his removability in violation of INA § 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. 8 U.S.C. § 1182(a)(6)(A)(i). The Court lacks jurisdiction to find otherwise. Accordingly, under a plain language reading of § 1225, Petitioner is an applicant for admission and is subject to mandatory detention pursuant to § 1225(b)(2)(A). For the reasons explained more fully below, the Petition should be denied.

BACKGROUND

The Petitioner is a native and citizen of Mexico. *See* Exhibit A, Form I-213, Record of Deportable/Inadmissible Alien, (Form I-213) dated September 6, 2025. Petitioner entered the United States without inspection at an unknown place and unknown date. *Id.*

On September 6, 2025, Petitioner was encountered by the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) at the Saint Lucie County Jail in Fort Pierce, Florida, following an arrest for operating a motor vehicle without a license. *See id.* An ICE detainer was placed on the same day. ICE detained Petitioner on September 23, 2025. *See* Exhibit B, Detention History; Exhibit C, Form I-200, Warrant for Arrest of Alien, served on September 23, 2025.

On October 7, 2025, Petitioner was placed in removal proceedings by the filing of a Notice to Appear (NTA) with the Executive Office for Immigration Review (EOIR), based on his removability in violation of INA § 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *See* Exhibit D, NTA dated September 7, 2025. Petitioner's removal proceedings are ongoing before the Krome Immigration Court. *See* Declaration of Deportation Officer Saul Perez Garcia ¶ 11.

Petitioner is currently detained by ICE ERO at the Miami Federal Detention Center (FDC) since September 26, 2025. *See id.* ¶ 5; *see also* Exhibit B., Detention History. ICE ERO at the Krome North Service Processing Center (Krome) retains docket control over Petitioner's case. *See* Declaration of Deportation Officer Saul Perez Garcia ¶ 11.

On October 21, 2025, Petitioner filed a bond redetermination request with the immigration judge at the Krome Immigration Court. On November 3, 2025, following a hearing on the bond request, the immigration judge issued a "no action" as Petitioner's counsel argued Petitioner had been "waved through" at the border, consistent with *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), and the court indicated that a *Quilantan* hearing would need to be conducted in the future. *See* Exhibit E, Order of the Immigration Judge on Bond, November 3, 2025; *see also* Declaration

of Deportation Officer Saul Perez Garcia at 12; Exhibit H, Motion for Bond. The immigration scheduled a hearing for November 19, 2025. *See* Exhibit F, Notice of Hearing for November 19, 2025. On November 19, 2025, a master calendar hearing was held. At that hearing, a different counsel appeared on Petitioner's behalf and requested additional attorney preparation time. The next master calendar setting is scheduled for December 23, 2025, at the Krome Immigration Court. *See* Exhibit G, Notice of Hearing for December 23, 2025. To date, he has not re-filed a bond re-determination request before the immigration court nor made a request for release to ICE ERO. *See* Declaration of Deportation Officer Saul Perez Garcia at 14.

ARGUMENT

I. The Court Lacks Subject Matter Jurisdiction Over Challenges To Ongoing Removal Proceedings.

To the extent Petitioner is challenging the NTA's classification of him as an alien present in the United States who has not been admitted or paroled, *see, e.g.,* DE 35; *see also* Exhibit D, NTA dated September 7, 2025, such challenges fall outside this Court's jurisdiction. Petitioner's claims implicate both the commencement and adjudication of removal proceedings. Accordingly, the Court lacks subject matter jurisdiction over such claims.

> Title 8, Section 1252 provides as follows:
>
> (g) Exclusive jurisdiction
>
> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), ***including section 2241 of title 28, United States Code, or any other habeas corpus provision***, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien ***arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.***

8 U.S.C. § 1252(g) (emphasis added). In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), the Supreme Court observed 1252(g) applies to three discrete actions that

the Attorney General may take: "her decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Id.* at 482 (emphasis in original). As to its purpose, the Court found that § 1252(g) "performs the function of categorically excluding from non-final order judicial review ... certain specified decisions and actions of the INS." *Id.* at 483.

Further, Title 8, United States Code, § 1252(b)(9) provides:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28, or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

In *Ivantchouk v. U.S. Attorney General*, 417 Fed. App'x 918 (11th Cir. 2011), the Eleventh Circuit observed, "the REAL ID Act expanded appellate courts' jurisdiction to consider constitutional and legal questions in a petition for review of the immigration proceedings, and it rendered a petition for review the alien's exclusive means for review of the removal order." *Id.* at 921. The REAL ID Act's amendment to § 1252(b)(9) categorically excludes 28 U.S.C. § 2241 as a basis for a district court to review an alien's order of removal and questions of law and fact arising from removal proceedings.

Moreover, "the Eleventh Circuit has held that, regardless of how an alien characterizes his or her claims, district courts lack jurisdiction over challenges to the commencement of removal proceedings." *De Vera v. U.S. Immigration and Customs Enforcement*, 2018 WL 1441344, at *2 (S.D. Fla. Mar. 21, 2018) (*citing Alvarez v. U.S. Immigration and Customs Enforcement*, 818 F.3d 1194, 1203 (11th Cir. 2016) (holding that 8 U.S.C. § 1252(g) bars courts from questioning ICE's "discretionary decision to commence removal …"); *Mata v. Sec'y of Homeland Sec.*, 426 F. App'x

698, 700 (11th Cir. 2011) (rejecting plaintiffs "attempts to evade the bars in 8 U.S.C. § 1252 by characterizing his claim as a challenge not to his removal but rather the Immigration and Naturalization Services' rescission decision"). Further, the Eleventh Circuit has recognized that § 1252(g) forecloses "the methods ICE used to detain [a Petitioner] prior to his removal hearing." *Alvarez*, 818 F.3d at 1203-04.

Thus, any challenge Petitioner raises regarding his classification as an alien present in the United States who has not been admitted or paroled constitutes a challenge to the commencement and adjudication of the removal proceedings. As such, there is no subject matter jurisdiction over Petitioner's claims and the Petition should be denied.

Further, in the event a removal order becomes final and Petitioner exhausts all remedies available to him, Petitioner can obtain judicial review of the removal order and alleged errors related thereto through a petition for review filed ***with the Court of Appeals*** with jurisdiction over the state in which his removal proceeding was conducted. *See* 8 U.S.C. § 1252(a)(5); *Balogun v. U.S. Attorney General*, 425 F.3d 1356, 1360 (11th Cir. 2005) (holding that "a criminal alien must now petition the court of appeals for review of all claimed legal errors relating to the BIA's final order of removal" and that "the provisions of 28 U.S.C. § 2241 no longer play any role in immigration cases"). As a jurisdictional prerequisite to obtaining judicial review at the Court of Appeals, Petitioner must first exhaust his administrative remedies available to him. *See, e.g., Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1297 (11th Cir. 2015) (recognizing that the Eleventh Circuit lacks jurisdiction to review final orders in immigration cases unless 'the alien has exhausted all administrative remedies available to the alien as of right").

Relatedly, the BIA has authority to review an adverse bond decision from an Immigration Judge (IJ). *See* 8 CFR § 1003.38. In EOIR PM 25-45, issued in September 2025, EOIR clarified

that IJs and the BIA also can consider constitutional challenges. *See* Exhibit I. To the extent Petitioner receives an adverse decision on bond, that decision coupled with his Due Process challenge, *see* DE 1 at COUNT III, should first be exhausted in the administrative proceedings. *Jean-Claude W. v. Anderson*, No. 19-cv-16282, 2021 WL 82250, at *2 (D.N.J. Jan. 11, 2021) ("To have jurisdiction to consider whether [petitioner] was denied due process, … I must confirm that [petitioner] has exhausted all available administrative remedies; if he has not, then I cannot review the merits of his claim." (citing *Yi v. Maugans*, 24 F.3d 500, 503–04 (3d Cir. 1994); *Okonkwo v. INS*, 69 F. App'x 57, 59–60 (3d Cir. 2003))).[2]

II. Section 1225(b)(2) Mandates Detention of Aliens, Like Petitioner, Who Are Present in the United States Without Having Been Lawfully Admitted.[3]

Under the plain language of § 1225(b)(2), the Government is required to detain all aliens, like Petitioner, who are present in the United States without admission and are subject to removal proceedings—regardless of how long the alien has been in the United States or how far from the

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[2] To the extent the Court views the Petition as challenging DHS policy, 8 U.S.C. § 1252(e)(3) prevents judicial review. Section 1252(e)(3) provides the U.S. District Court for the District of Columbia with exclusive authority to review challenges to regulations and policies issued to implement 8 U.S.C. § 1225(b). *See* DE 1 ¶¶ 28-30 (discussing policy).

[3] *See, e.g., Rodriguez Izquierdo v. Ripa*, No. 25-cv-61845-SMITH, at DE 15 pp. 2, 5 (S.D. Fla. Oct. 25, 2025) (where petitioner entered without inspection, finding "[b]ecause Petitioner remains an applicant for admission, his detention is authorized so long as he is "not clearly and beyond doubt entitled to be admitted" to the United States. Petitioner's continued detention is therefore authorized by §1225(b)(2)(A) and, according to that statute, such detention is mandatory, regardless of whether the alien has been placed in full or expedited removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018).").

Respondents recognize that courts in this District have rejected similar arguments in granting habeas petitions seeking bond hearings. *See, e.g., Perez v. Parra*, Case No. 25-cv-24820 (S.D. Fla.). Nonetheless, Respondents maintain and preserve these arguments for the record in this case. Notably, other district courts have agreed with Respondents' position. *See, e.g., Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025).

border they ventured. That unambiguous language resolves this case. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 676 (2020) ("Our analysis begins and ends with the text.").

A. The Plain Language of § 1225(b)(2) Mandates Detention of Applicants for Admission.

"As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute. It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Section 1225(a) deems all aliens who either "arrive[] in the United States" or who are "present in the United States [and] who ha[ve] not been admitted" to be "applicant[s] for admission." 8 U.S.C. § 1225(a)(1). And "admission" under the INA means lawful entry after inspection by immigration authorities, and not mere physical entry. 8 U.S.C. § 1101(a)(13)(A). Thus, an alien who enters the country without permission is and remains an applicant for admission, regardless of the duration of the alien's presence in the United States or the alien's distance from the border.

In turn, § 1225(b)(2) provides that "an alien who is an applicant for admission" "shall be detained" pending removal proceedings if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). The statute's use of the term "shall" makes clear that detention is mandatory, *see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998), and the statute makes no exception based upon the duration of the alien's presence in the country or where in the country the alien is located. Therefore, the statute's plain text mandates that the Government detain all "applicants for admission" who are not clearly and beyond a doubt entitled to be admitted.

Petitioner falls squarely within the statutory definition. He was "present in the United States," and he has "not been admitted." 8 U.S.C. § 1225(a). Therefore, § 1225(b)(2) mandates

Petitioner "be detained for a proceeding under [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A). *See* fn. 2, *supra* (citing *Rodriguez Izquierdo v. Ripa*, No. 25-cv-61845-SMITH, at DE 15 pp. 2, 5 (S.D. Fla. Oct. 25, 2025).

B. Applicants for Admission under § 1225(b)(2) are seeking to be legally admitted into the United States.

As explained above, Petitioner is an "applicant[] for admission" under § 1225(b)(2) and is, therefore, seeking to be legally admitted into the United States. The statute itself makes clear that an alien who is an "applicant for admission" *is* necessarily "seeking admission." Moreover, an alien like Petitioner, who is identified by immigration authorities as unlawfully present, and who does not choose to depart from the United States voluntarily, is "seeking admission," *i.e.,* seeking legal authority to remain in the United States.

1. The "seeking admission" clause does not negate or otherwise limit the statutorily defined term "applicant for admission".

Section 1225(b)(2) requires the detention of an "applicant for admission, if the examining officer determines that [the] alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statutory text and context show that being an "applicant for admission" is a means of "seeking admission"—no additional affirmative step is necessary. In other words, every "applicant for admission" is inherently and necessarily "seeking admission," at least absent a choice to pursue voluntary withdrawal of the application for admission or voluntary departure.

For example, § 1225(a) provides that "[a]ll aliens … who are applicants for admission *or otherwise* seeking admission or readmission … shall be inspected." 8 U.S.C. § 1225(a)(3) (emphasis added). The word "[o]therwise' means 'in a different way or manner[.]'" *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 535 (2015) (quoting Webster's Third New International Dictionary 1598 (1971)); *see also Villarreal v. R.J. Reynolds*

Tobacco Co., 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) ("or otherwise" means "the first action is a subset of the second action"). Being an "applicant for admission" is thus a particular "way or manner" of seeking admission, such that an alien who is an "applicant for admission" *is* "seeking admission" for purposes of § 1225(b)(2)(A).[4] No separate affirmative act is necessary. *See Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012) ("[M]any people who are not *actually* requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws"). Accordingly, § 1225(b) unambiguously provides that an alien who is an "applicant for admission" is "seeking admission," even if the alien is not engaged in some separate, affirmative act to obtain lawful admission.

2. Any perceived redundancy in the statute cannot serve as a basis to avoid the clear language of the statute.

As explained above, an "applicant for admission" is "seeking admission" under § 1225. To the extent this reading results in some redundancy in § 1225(b)(2)(A), that "is not a license to rewrite" § 1225 "contrary to its text." *Barton v. Barr*, 590 U.S. 222, 239 (2020); *see Heyman v. Cooper*, 31 F.4th 1315, 1322 (11th Cir. 2022) ("sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance" especially when "the arguably redundant words that the drafters employed … are functional synonyms" (alterations accepted and emphasis in original)).

"The canon against surplusage is not an absolute rule." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). "Redundancies are common in statutory drafting—sometimes in a

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[4] As § 1225 shows, being an "applicant for admission" is only *one* "way or manner" of "seeking admission," not the exclusive way. 8 U.S.C. § 1225(a)(3). For example, lawful permanent residents returning to the United States are not "applicants for admission" because they are already admitted, but they still may be deemed to be "seeking admission" in some circumstances. *See* 8 U.S.C. § 1103(A)(13)(C).

congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton*, 590 U.S. at 239. "[R]edundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* Thus, as the Supreme Court explained in *Barton*, "[s]ometimes the better overall reading of a statute contains some redundancy." *Id.*

Moreover, "the surplusage canon … must be applied with statutory context in mind" and should not be employed to undermine congressional intent. *United States v. Bronstein*, 849 F.3d 1101, 1110 (D.C. Cir. 2017). As explained in greater detail below, in 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996), with the goal of ensuring that aliens who enter the United States unlawfully do not receive greater privileges and benefits than aliens who lawfully present themselves for inspection at a port of entry. The canon against surplusage should not be employed to re-write the statute in contravention of this statutory context.

C. Section 1226 Does Not Support Petitioner's Argument.

Petitioner's reliance upon, and reference to, 8 U.S.C. § 1226 is unavailing. Petitioner's detention is controlled by § 1225(b)(2), not § 1226. Sections 1225 and 1226 are separate statutory provisions that provide independent bases for detention and, generally, apply to different groups of aliens. While, as explained below, there is some overlap between the aliens subject to detention under the two detention provisions, that overlap does not create a redundance because the two statutes provide for different bases for release.

Section 1226(a) authorizes the Executive to "arrest[] and detain[]" *any* "alien" pending removal proceedings. Section 1226(a) provides the detention authority for the significant group of aliens who are *not* deemed "applicants for admission" subject to § 1225(b)(2)(A)—specifically,

aliens who have been admitted to the United States but are now removable, like those who overstay a visa or lawful permanent residents who engage in conduct that renders them removable.[5] Thus, section 1225(b)(2) is the more specific detention provision. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("the specific governs the general"). Accordingly, § 1226(a) does not control Petitioner's detention.

Section 1226(c) provides for mandatory detention and is an exception to § 1226(a)'s discretionary detention regime. It requires the Executive to detain "any alien" who is deportable or inadmissible for having committed specified offenses or engaged in terrorism-related actions. *See* 8 U.S.C. § 1226(c)(1)(A)-(E). Petitioner has not committed one of the specified offenses and has not engaged in terrorism-related actions. Accordingly, he is not detained under § 1226(c).

Earlier this year, Congress passed the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 2 (2025), which amended portions of § 1226(c). While that amendment adds some overlap between aliens subject to detention under § 1225(b)(2) and § 1226(c), that overlap does not apply to Petitioner, and as explained below, it does not create a redundancy as the amendment does independent work.

The Laken Riley Act provides for mandatory detention for an alien who is "present … without being admitted or paroled"—*i.e.*, is inadmissible under §1182(a)(6)(A)—and "is charged with, is arrested for, is convicted of, admits having committed, or admits committing" one of the enumerated criminal acts. 8 U.S.C. § 1226(c)(1)(E). Aliens subject to detention under § 1226(c)(1)(E) are effectively applicants for admission that committed one of the enumerated acts and, as applicants for admission, would also be subject to mandatory detention under § 1225(b)(2).

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[5] The detention of any of the millions of aliens who have overstayed their visas is governed by § 1226(a), because those aliens (unlike Petitioner) *were* lawfully admitted to the United States.

D. The Government's Reading Comports with Congressional Intent.

Before 1996, federal immigration laws required the detention of aliens who presented at a port of entry but allowed aliens who were already unlawfully present in the United States to obtain release pending removal proceedings. In 1996, Congress passed the IIRIRA specifically to stop conferring greater privileges and benefits on aliens who enter the United States unlawfully as compared to those who lawfully present themselves for inspection at a port of entry. Accordingly, the Government's reading of the statute is not only supported by the express language of § 1225, but it also comports with congressional intent. *See King v. Burwell*, 576 U.S. 473, 492 (2015) (rejecting interpretation that would lead to a result "that Congress designed the Act to avoid"); *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419-20 (1973) ("We cannot interpret federal statutes to negate their own stated purposes.").

The INA, as amended, contains a comprehensive framework governing the regulation of aliens, including the creation of proceedings for the removal of aliens unlawfully in the United States and requirements for when the Executive is obligated to detain aliens pending removal.

Prior to 1996, the INA treated aliens differently based on whether the alien had physically "entered" the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) (citing 8 U.S.C. §§ 1225(a), 1251 (1994)); *see Hing Sum v. Holder*, 602 F.3d 1092, 1099-1100 (9th Cir. 2010) (same). "Entry" referred to "any coming of an alien into the United States," 8 U.S.C. § 1101(a)(13) (1994), and whether an alien had physically entered the United States (or not) "dictated what type of [removal] proceeding applied" and whether the alien would be detained pending those proceedings, *Hing Sum*, 602 F.3d at 1099. Accordingly, the INA's prior framework, which distinguished between aliens based on physical "entry," had:

> the 'unintended and undesirable consequence' of having created a statutory scheme where aliens who entered without inspection 'could take advantage of the greater procedural and substantive rights afforded in deportation proceedings,' *including*

> *the right to request release on bond*, while aliens who had 'actually presented themselves to authorities for inspection … were subject to mandatory custody.

Hurtado, 29 I. & N. Dec. at 223 (emphasis added) (quoting *Martinez v. Att'y General of U.S.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012)); *see also Hing Sum*, 602 F.3d at 1100 (similar); H.R. Rep. No. 104-469, pt. 1, at 225 (1996) ("House Rep.") ("illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection").

Congress discarded that regime through enactment of IIRIRA. Among other things, that law had the goal of "ensur[ing] that all immigrants who have not been lawfully admitted, regardless of their legal presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc). To that end, IIRIRA replaced the prior focus on physical "entry" and instead made lawful "admission" the governing touchstone. IIRIRA defined "admission" to mean "the *lawful* entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added). In other words, the immigration laws would no longer distinguish aliens based on whether they had managed to evade detection and enter the country without permission. Instead, the "pivotal factor in determining an alien's status" would be "whether or not the alien has been *lawfully* admitted." House Rep., *supra*, at 226 (emphasis added); *Hing Sum*, 602 F.3d at 1100 (similar).

Petitioner's interpretation would restore the regime Congress sought to discard: It would require detention for those who present themselves for inspection at the border in compliance with law yet grant bond hearings to aliens who evade immigration authorities, enter the United States unlawfully, and remain here unlawfully for years, or even decades, until an involuntary encounter with immigration authorities. That is *exactly* the perverse preferential treatment for illegal entrants

that IIRIRA sought to eradicate. Accordingly, this Court should reject Petitioner's interpretation. *King*, 576 U.S. at 492 (rejecting "petitioners' interpretation because it would … create the very [thing] that Congress designed the Act to avoid").

The Government's reading, on the other hand, is true to Congress's intent and should be adopted.

E. The Government's Reading Accords with *Jennings*.

The Government's interpretation is consistent with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *Jennings* reviewed a Ninth Circuit decision that applied constitutional avoidance to "impos[e] an implicit 6-month time limit on an alien's detention" under § 1225(b) and § 1226. *Id.* at 292. The Court held that neither provision is so limited. *Id.* at 292, 296-306. In reaching that holding, the Court did not—and did not need to—resolve the precise groups of aliens subject to § 1225(b) or § 1226. Nonetheless, consistent with the Government's reading, the Court recognized in its description of § 1225(b) that § "1225(b)(2) …. serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* at 287.

F. Under *Loper Bright*, the Statute Controls, Not Prior Agency Practice

Any argument that prior agency practice applied § 1226(a) is unavailing because under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 411 (2024) (overturning *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)), the plain language of the statute and not prior practice controls. *Hurtado*, 29 I. & N. Dec. at 225–26. In overturning *Chevron*, the Supreme Court recognized that courts often change precedents and "correct[] our own mistakes." *Loper Bright*, 603 U.S. at 411. *Loper Bright* overturned a decades old agency interpretation of the Magnuson-Stevens Fishery Conservation and Management Act that itself predated IIRIRA by twenty years. *Id.* at 380. Thus, longstanding agency practice carries little, if any, weight under *Loper Bright*.

CONCLUSION

For the reasons set forth above, the Petition for Writ of Habeas Corpus should be denied.

Dated: November 26, 2025

Respectfully submitted,

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